

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

LOGMET, LLC

and

Case 09-CA-247369

LOCAL UNION NO. 780, MOTION PICTURE  
AND VIDEO LABORATORY TECHNICIANS,  
ALLIED CRAFTS AND GOVERNMENT EMPLOYEES, IATSE

*Zuzana Murarova, Esq.*, for the General Counsel.

*Howard E. Cole and Jennifer K. Hostetler Esqs. (Lewis, Roca, Rothgerber, Christie, LLP, Las Vegas, Nevada)*, for the Respondent.

*Nicholas Wolfmeyer, Esq. (Egan, Lev, Lindstrom & Siwica, P.A., Orlando, Florida)*,  
for the Charging Party.

DECISION

Statement of the Case

Arthur J. Amchan, Administrative Law Judge. This case was tried via Zoom video conferencing from February 16-19 and February 22-23, 2021. IATSE Local 780 filed the charge in this matter on August 29, 2020. The General Counsel issued the complaint on October 13, 2020.

On the entire record,<sup>1</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent I make the following

FINDINGS OF FACT<sup>2</sup>

I. JURISDICTION

Respondent, Logmet, LLC, a limited liability company, is in the business of providing labor at military installations. It commenced work as a subcontractor to Data Management

---

<sup>1</sup> At Tr. 962, line 1: Gillespie should be Fields.

<sup>2</sup> While I have considered witness demeanor, I have not relied upon it in making any credibility determinations. Instead, I have credited conflicting testimony based upon the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Panelrama Centers*, 296 NLRB 711, fn. 1 (1989).

Systems (DMS) employing civilian drivers at Wright-Patterson Air Force Base in Dayton, Ohio on August 1, 2019. Respondent employed these drivers from that date until May 18, 2020. Logmet's main office is in Texas. Annually, Logmet provides services valued in excess of \$50,000 in States other than Ohio. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, IATSE Local 780, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that Logmet was a "perfectly clear" successor to a company named Trailboss at Wright-Patterson. Trailboss had a collective bargaining agreement with IATSE Local 780 covering the employees in question and others which ran from February 1, 2015 to May 31, 2020. The General Counsel alleges that Respondent violated Sections 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of the Trailboss collective bargaining agreement, particularly those articles relating to shift premiums, the payroll workweek and pay periods, health care coverage, life insurance coverage and a 401K retirement plan.

Sometime prior to July 1, 2019, the General Services Administration of the Federal Government awarded Data Management Systems (DMS) a contract for the provision of transportation services that had been previously awarded to Trailboss. This contract had been awarded to many different contractors over the course of several decades. IATSE Local 780 had represented the drivers at Wright-Patterson since the late 1980s.

DMS' was to begin operating at Wright Patterson on August 1, 2019. On July 3, 2019, DMS contacted Logmet and indicated that it intended to subcontract part of its contract with the Government to Logmet. DMS attached a copy of the Trailboss/IATSE 780 collective bargaining agreement to its July 3 email from DMS to Logmet. The subcontract between DMS and Logmet was not signed until September 9, 2019.

Initially, DMS discussed awarding the work of 26 employees to Logmet. Later, it changed its proposal to only the 13 drivers. DMS retained the office staff for the transportation operation and apparently signed the Trailboss collective bargaining agreement that had covered these employees.<sup>3</sup> On July 25, negotiations between Logmet and DMS came to a halt and then quickly restarted. The change in the scope of the subcontract meant that the Logmet bargaining unit only included drivers and was thus considerably smaller than the Trailboss bargaining unit.<sup>4</sup>

---

<sup>3</sup> Trailboss mechanics were in a separate bargaining unit. DMS apparently signed the Trailboss collective bargaining agreement covering these employees as well.

<sup>4</sup> The unit drivers transported people and freight around the Wright-Patterson base and in and out of the base. For example, they drove busses transporting service personnel and transported equipment, such as the staircase for Air Force One when the President's airplane was in the vicinity of Dayton. Most of the vehicles they drive are owned by the United States Government.

On July 16-17, 2019, Logmet, by Joseph Carter, interviewed all the Trailboss drivers for potential employment with it. It did not interview any other employees. The Logmet interviewer met with some employees in a group of 2 or 3. He did not discuss compensation and benefits other than to say that there would be no change in their wages and hours. Indeed, prior to conducting the interviews, Logmet's Operations Manager, Cheryl Fields had instructed Carter not to alarm the incumbent drivers. She told him to let them know that their economic terms and conditions of employment were not going to change, Tr. 794-95, 800. Carter followed these instructions when interviewing the drivers. Respondent did not inform unit employees of the changes to the terms and conditions of their employment until August 22 or 23, after they had been working for Logmet for three weeks.

On July 21, 2019 Respondent emailed all the former Trailboss drivers an offer of employment beginning on August 1, at a base pay of \$22.04 per hour paid in biweekly installments. No other terms of employment were specified. Most or all of the drivers responded within a day, accepting the offer. All 13 did so prior to August 1.<sup>5</sup> Logmet did not interview or offer employment to any driver who had not been a member of the Trailboss bargaining unit.

On July 29, Union attorney Paul Berkowitz had a telephone conversation with Logmet CEO Wayne Rankin. On July 30, 2019, Logmet retained Howard Cole to represent it with regard to labor issues emanating from its subcontract at Wright-Patterson. In a letter sent that day and/or a telephone conversation that day with then union counsel Berkowitz, Cole stated that Logmet did not intend to assume the Trailboss collective bargaining agreement but would negotiate for a contract with IATSE Local 780. He also stated that Logmet would comply with the Service Contract Act (SCA). Cole also mentioned that Logmet had a Sunday to Saturday work week and that employees would be responsible for keeping records of their time and attendance. Further, Cole stated that he was not sure whether he or an Ohio attorney would handle negotiations with the Union.

Cole further stated that Logmet intended to establish its benefits program on August 1. He did not provide any information on what those benefits would be. Logmet recognized Local 780 as the exclusive collective bargaining representative of its Wright-Patterson employees on August 1.

On August 1, the drivers reported to work at 6:00 a.m., although nobody had told them when to report. They were supervised by Ryan Gillespie, a DMS employee, who had also supervised them as an employee of Trailboss.<sup>6</sup> Logmet did not have any representative at

---

<sup>5</sup> One driver, Sargent Engle, transferred out of the bargaining unit to a position with DMS sometime after August 1.

Respondent in its brief at page 4 states only 1 driver returned the July 21 offer letter according to its instructions. However, the record establishes that all of them had accepted this offer by July 30 and that Respondent knew that, Tr. 58, 68, 421., 470-71, 497-500, G.C. Exh. 30, R. Exh. 57. For example, on July 29, Respondent sent employee Wayne Lowry a hiring kit, G.C. Exh.4. Lowry had accepted the July 21 offer by letter, not by fax or email as directed in the offer letter, Tr. 58. No agent of Respondent testified that they did not receive the acceptances or that it revoked the July 21 offers.

<sup>6</sup> Gillespie's employment with Trailboss ended on July 18, 2019. DMS hired him as a ground transportation supervisor on July 23. Gillespie had previously worked for DMS from 2014-17.

Wright-Patterson. Dispatcher Lisa Duty, a DMS employee, sent the drivers out on their assignments. These were essentially identical to the tasks they performed for Trailboss. On August 1, the drivers signed a second offer of employment at various times during the day.

Logmet's Operations Manager, Cheryl Fields, is sometimes referred to in this record by her maiden name, Cheryl Bear. She testified that she had a telephone conversation with Ryan Gillespie on August 1 in which Gillespie put all the drivers on a speakerphone. She testified further that she explained Logmet's compensation and benefits to them at that time. Several employee witnesses: Mike Lowry, Eric Benson and Alan Robbins, and DMS supervisor Gillespie testified such a call did not take place. I credit their testimony and find that it did not. There is no evidence in this record suggesting that Gillespie, the DMS Operations Manager, has any bias against Logmet. There is no documentary or testimonial evidence corroborating Field's assertions. Respondent's brief at pages 7-8 quotes Field's testimony but does not mention the contradictory testimony. Despite the importance given to this phone call in Respondent's brief, it was not mentioned in Respondent's position statement submitted during the investigation of the charge in this case, Tr. 921-22.<sup>7</sup>

Not only do I credit the General Counsel's witnesses on this point, but, as a result, I find that Ms. Fields is generally an incredible witness, whose testimony I decline to credit in the absence of credible corroborative evidence. For example, I give no weight to her testimony about what Mr. Lipski, the Union business manager, said to her when they met.

Respondent's attorney Cole called the Union's attorney Berkowitz on August 1, informing him that all the former Trailboss drivers had accepted employment with Logmet and that Logmet would recognize the Union. Berkowitz met with the unit drivers on August 1.

Logmet CEO Wayne Rankin and its Operations Manager, Cheryl Fields, met with then Union counsel Paul Berkowitz in Las Vegas on August 13, 2019. On September 18, 2019 Fields and Local 780 Business Manager Jerry Lipski met. Fields presented to Lipski Logmet's first proposal for a collective bargaining agreement.

A complete statement of the wages and benefits being offered by Logmet was sent to drivers on the evening of August 22, 2019. This included the forms for signing up for health insurance.

The drivers' health insurance changed from the Union program with Blue Cross/Blue Shield to one with Aetna, which was administered through the Boon Group.<sup>8</sup> Among the differences in the health insurance plans was the fact that the Aetna Plan had deductibles for all services; the Union's Blue Cross Plan did not for in-network hospital and health benefits,, G.C.

---

<sup>7</sup> Even if I were to credit Ms. Fields, the information she claims to have shared with unit employees was insufficient to satisfy Logmet's obligations as a "perfectly clear" successor. It would still have forfeited its right to unilaterally set their initial terms and conditions of employment.

<sup>8</sup> Some employees had their medical bills paid by Blue Cross under the Union's health insurance plan for some period after they began working for Logmet. This occurred because Trailboss had made contributions to the Union's health and welfare funds sufficient to pay these bills for months after Trailboss ceased to be the drivers' employer.

Exhs. 26, 31. It appears that some employees had out-of-pocket expenses under the Aetna Plan that they would not have had under the IATSE Blue Cross/Blue Shield Plan.

The drivers' retirement plan changed from one through the Union with Nationwide Insurance Company to a 401K plan administered by Empower via the Boon Group. Logmet did not make any contributions to employees' 401K accounts until after it terminated its contract with DMS on May 18, 2020.

Other changes were the elimination of a shift premium for working the 2d or 3d shift. Logmet also changed the drivers' workweek resulting in their not receiving their first paycheck for an additional week.

Logmet terminated its subcontract with DMS effective May 18, 2020. Since then the bargaining unit employees have worked for DMS. DMS withheld payment of \$287,000 to Logmet. The two companies went to arbitration over this matter. The arbitrator ruled in favor of Logmet.

The United States Department of Labor (DOL) conducted an audit to determine whether Logmet complied with the Service Contract Act. DOL determined that Logmet owed drivers collectively about \$6,000 in wages. Logmet attributes this to a time keeping system maintained by DMS, which was separate from its time-keeping system. DOL did not assess any penalty against Logmet, which has paid the drivers the additional amount that was owed to them according to the Labor Department.

### *Analysis*

*Respondent was a "perfectly clear" successor to Trailboss Enterprises and did not adequately inform employees beforehand of any changes it intended to make in their wages, hours and working conditions.*

Ordinarily, a successor employer is not bound by collective bargaining agreements negotiated by its predecessor and is free to set the initial terms of employment, *NLRB v. Burns Security Services*, 406 U.S. 272, 281-295 (1972). However, there are instances, such as in the instant case in which it is perfectly clear that the new employer plans to retain all the employees in the unit(s) and in which it will be appropriate to have the employer initially consult with the employees' bargaining representative(s) before fixing the initial terms.

The test for determining successorship under *Burns* and its progeny is well established: An employer, generally, succeeds to the collective bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement," in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a "substantial continuity" between the enterprises."

*Ready Mix USA, Inc.*, 340 NLRB 946, 946-47 (2003)

There is no question that Logmet was not only a successor employer to Trailboss but was a perfectly clear successor to Trailboss with regard to the drivers at Wright-Patterson. It hired all the former Trailboss drivers and nobody else. The drivers performed their duties in an almost identical manner with Logmet as they did with Trailboss.

In *Spruce Up Corp.*, 209 NLRB 194, 195 (1974) the Board restricted the obligations of a “perfectly clear” successor to employers who misled employees into believing they would all be retained without changes to their wages, hours, or conditions of employment. Subsequently, the Board held that the new employer has an obligation to bargain over initial terms when it displays an intent to employ the predecessor’s employees without making it clear that the employment will be on different terms from in those in place with the predecessor, *Canteen Co.*, 317 NLRB 1052, 1053 (1995) enfd. 103 F. 3d 1355 (7<sup>th</sup> Cir. 1997); *Creative Vision Resources, LLC*, 364 NLRB No.91 (2016) enfd. 882 F. 3d 510 (5<sup>th</sup> Cir. 2016); *Walden Security*, 366 NLRB 44 (2018), *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016).

Respondent was obligated to notify employees of the specifics of any planned material change in the initial terms and conditions of employment no later than July 21, 2019 when it extended offers to all the Trailboss drivers, *First Student Inc.*, 366 NLRB No. 13 (2018) and cases cited above.. Logmet failed to meet its obligations under the Act both because it actively misled the employees to understand that the terms and conditions would not materially change at least by the time it offered them employment on July 21, and in failing to apprise employees of such changes until 3 weeks after they started working for Logmet. Although the drivers had precious little time to look for other employment, Logmet certainly lulled them into believing that there would be no material change in the terms and conditions of their employment at Wright Patterson.

In the instant case, I find the Respondent did not sufficiently explain, in a legally timely manner to the unit employees, the changes that would occur in their working conditions when they became employees of Logmet. Thus, it was not entitled to set the terms of employment initially and unilaterally or make changes in these conditions without bargaining to impasse with the Union, see *Cadillac Asphalt*, 349 NLRB 6, 10 (2007). Respondent was not obligated to sign the Union’s collective bargaining agreement with Trailboss, so long as it provided unit employees wages, hours and working conditions (including such things as health insurance) that were equivalent to those provided by that agreement.

Logmet appears to argue that its alleged compliance with the Service Contract Act negates any obligation to comply with the National Labor Relations Act. It does not cite any precedent in support of this proposition; I thus reject it. Moreover, pursuant to the Service Contract Act, according to Respondent’s brief at page 27, “Logmet paid the drivers at WPAFB no less than the wages and fringe benefits to which such employees would have been entitled if employed under the Trailboss CBA.” If this statement is accurate it would appear that employees would not be entitled to any compensation pursuant to the remedy section of this decision.

*Conclusion of Law*

Respondent Logmet, LLC was a perfectly clear successor employer to Trailboss Enterprises, Inc. between August 1, 2019 and May 18, 2020 at Wright-Patterson Air Force Base. Logmet violated Section 8(a)(5) and (1) by setting initial terms and conditions of employment for unit employees that were different and less generous from the terms and conditions for unit employees when Trailboss was their employer. This violates the Act because Respondent changed the terms and conditions of employment without notifying unit employees of these changes in a legally timely fashion and then without bargaining to impasse over these terms with the Union.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent is required to make whole bargaining unit employees who were adversely affected by its departure from the terms and conditions of employment they enjoyed under Trailboss Enterprises. This includes changes in health and welfare benefits and 401(k) plan, as provided in the Union's collective-bargaining agreement with Trailboss.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

## ORDER

The Respondent, Logmet LLC its officers, agents, successors, and assigns, shall

1. Cease and desist from changing the initial terms and conditions of employment of employees without bargaining to impasse regarding such changes at any time that it is a "perfectly clear" successor to another employer---unless it communicated these changes to employees at the time it demonstrated an intent to retain such employees..
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Make whole all bargaining unit employees to the extent they have suffered any losses as a result of the Respondent's unlawful changes to unit employees' initial terms and conditions of employment in the manner set forth in the remedy section of this decision.
  - (b) Within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense, a copy of the attached notice marked "Appendix" on forms provided by the Regional Director for Region 9 after being signed by the Respondent's authorized representative, to all current employees and former employees employed by the Respondent at Wright-Patterson Air Force Base, at any time since August 1, 2019.

---

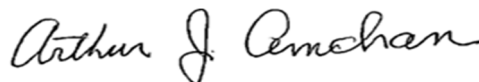
<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5

Dated, Washington, D.C April 5, 2021.

10

A handwritten signature in cursive script that reads "Arthur J. Amchan". The signature is written in black ink and is positioned above a horizontal line.

Arthur J. Amchan  
Administrative Law Judge



## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT change the initial terms and conditions of employment of employees without bargaining to impasse with their collective bargaining representative regarding such changes at any time that we are a “perfectly clear” successor to another employer---unless we communicated these changes to employees at the time we demonstrated an intent to retain such employees.

WE WILL make whole all bargaining unit employees formerly employed by Logmet, LLC at Wright-Patterson Air Force Base who were represented by the Motion Picture and Video Laboratory Technicians, Allied Crafts and Government Employees Local No. 780 (IATSE) to the extent they have suffered any losses as a result of our unlawful conduct, i.e., failing to abide by the terms and conditions of employment of their previous employer, Trailboss Enterprises, Inc.

LOGMET, LLC

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202-3271  
(513) 684-3686, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/09-CA-247369](http://www.nlr.gov/case/09-CA-247369) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (513) 684-3750.